

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER SMITH,

Defendant-Appellant.

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UNPUBLISHED

October 28, 2004

No. 248602

Wayne Circuit Court

LC No. 02-012068-01

Before: Whitbeck, C.J., and Jansen and Bandstra, JJ.

PER CURIAM.

Defendant Christopher Smith was charged with armed robbery, MCL 750.529, and possession of a firearm during the commission of a felony, MCL 750.227b. Following a nonjury trial, the prosecutor voluntarily dismissed the felony-firearm charge and the court found Smith guilty of the lesser included offense of unarmed robbery, MCL 750.530. Smith was later sentenced to nineteen months to fifteen years in prison. Smith appeals his conviction as of right. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

**I. Basic Facts And Procedural History**

This case arose out of an altercation that took place at a gas station on the night of September 12, 2002. At trial, Aaron Ramsey testified that he walked to the gas station to get some cigarettes and lottery tickets that night. As Ramsey approached the station, he saw Smith and William Hicks coming from a different direction, and Hicks was holding a gun. They apparently entered the station behind Ramsey. While standing in line for service, Ramsey was pushed from behind. He tripped over a nearby newspaper stand and fell to the floor. The next thing he knew, Smith was punching him. The force of the blows knocked out some of his teeth. Smith asked Ramsey “why, why, was you playing him?” or “Why y’all keeping with me?” Ramsey did not know what Smith meant. Ramsey was also struck in the back of the head by a hard object. He did not see the object and could not say if it was Hicks’ gun. Ramsey admitted that he was not sure Smith was the person who struck him with the object. Smith reached for Ramsey’s left front pants pocket and ripped it open, taking the few dollars that had been in the pocket. After Smith took the money, he and Hicks left the station. Ramsey bought a pack of cigarettes with the money he had been holding and then left the station. Ramsey went home and had a friend take him to the police station and then to the hospital.

When Ramsey came into the station, officer Gregory Jones noted that he had “[i]njuries to his mouth area. I believe, approximately, three of this [sic] teeth were missing. I believe his top teeth, funny lip.” Ramsey reported that Smith had assaulted him at a gas station, and that Smith was with Hicks. Jones thought Ramsey said something about money, but did not note in his report that any had been taken. The next day, Ramsey gave a written statement to Ellen Counts, the investigating officer, that was consistent with Ramsey’s trial testimony.

Eric Flournoy testified that he was inside the gas station when Ramsey arrived. According to Flournoy, Smith came in sometime after Ramsey and the two of them began arguing, then throwing punches, causing Ramsey to land on the floor. Someone named Bill broke up the fight. Smith left the gas station while Ramsey stayed behind to pay for his gas and cigarettes. Ramsey “went on and pumped his gas at the gas station, pumped in the gas tank. And then he pulled off and left.” Flournoy did not see Smith take anything from Ramsey’s pocket. Flournoy testified that he never revealed what he knew to the police because none came to the scene. He said nothing after learning that Smith had been arrested and jailed because by that time, Flournoy was incarcerated and Smith had been released.

Ramsey testified on rebuttal that he saw Flournoy that night, but only outside of the gas station, after the altercation. Ramsey never saw Flournoy inside the station. According to Ramsey, the only customers in the station besides himself were two women, Smith, and Hicks. Ramsey also recalled that contrary to his earlier testimony, he had actually driven to the gas station.

The prosecutor dismissed the felony-firearm charge, but argued that Smith was guilty of armed robbery because although Hicks was the one with the weapon, the two men were together immediately before, during, and immediately after the incident. According to the prosecutor, at the very least, Smith was guilty of the lesser offense of unarmed robbery for battering Ramsey and taking his money.

Smith argued that he was not guilty of robbery in any form because, according to Jones’ report taken immediately after the incident, nothing was taken from Ramsey. Smith argues that, at most, he was guilty of assault and battery. However, because the trial court believed Ramsey’s testimony that Smith knocked him down, ripped open his pants pocket and took his money, it found Smith guilty of unarmed robbery.

## II. Sufficiency Of The Evidence

### A. Standard Of Review

We review de novo challenges to the sufficiency of the evidence, taking the evidence in the light most favorable to the prosecutor and determining whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt.<sup>1</sup>

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<sup>1</sup> *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999); *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001).

## B. Intent To Commit Larceny

The elements of unarmed robbery are “(1) the felonious taking of any property which may be the subject of larceny from the person or presence of the complainant, (2) by force and violence, assault or putting in fear, (3) while not armed with a dangerous weapon.”<sup>2</sup> Unarmed robbery is a specific intent crime<sup>3</sup> that requires proof that the defendant harbored a larcenous intent, that is, the intent to permanently deprive the owner of his property.<sup>4</sup>

Smith’s sole issue on appeal is that the evidence was insufficient to sustain the verdict because there was no evidence that he intended to commit a larceny. The evidence showed that Smith and Aaron Ramsey were inside a gas station. Smith said something to Ramsey, which Ramsey did not understand, and then knocked him down and began punching him. Ramsey testified that during the attack, Smith ripped Ramsey’s pants pocket, took the money that had been in it, and walked out of the gas station with it. The trial court evidently found Ramsey’s testimony credible, and we defer to that finding.<sup>5</sup> Smith’s intent may be inferred from his conduct and from facts and circumstances established beyond a reasonable doubt.<sup>6</sup> We conclude that the evidence was sufficient to prove that Smith harbored the requisite intent.<sup>7</sup>

Affirmed.

/s/ William C. Whitbeck

/s/ Kathleen Jansen

/s/ Richard A. Bandstra

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<sup>2</sup> *People v Spry*, 74 Mich App 584, 594; 254 NW2d 782 (1977).

<sup>3</sup> *People v Dupie*, 395 Mich 483, 487; 236 NW2d 494 (1975).

<sup>4</sup> *People v Fordham*, 132 Mich App 70, 75; 346 NW2d 899 (1984), rev’d on other grounds 419 Mich 874; 347 NW2d 702 (1984).

<sup>5</sup> *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997).

<sup>6</sup> *People v Strong*, 143 Mich App 442, 452; 372 NW2d 335 (1985).

<sup>7</sup> *People v Henderson*, 22 Mich App 128, 131; 177 NW2d 254 (1970).